

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10 DONALD ROBIN BARREN, )  
11 Petitioner, ) 2:09-cv-01202-RLH-LRL  
12 vs. ) **ORDER**  
13 HOWARD SKOLNIK, *et al.*, )  
14 Respondents. ) /

16 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,  
17 by a Nevada state prisoner. Before the Court are petitioner's motion for relief from order (ECF No.  
18 50), motion to amend the pleadings (ECF No. 55), and motion for a copy of the local rules (ECF No.  
19 59).

**20 || I. Motion for Relief from Order (ECF No. 50)**

Petitioner has filed a motion for relief from the Court’s order entered February 7, 2011. (ECF No. 49). The Court’s order granted respondents’ motion to file excess pages of the answer, denied petitioner’s motion for an evidentiary hearing and expansion of the record, and denied petitioner’s motion entitled “quasi discovery request.” (ECF No. 49). Petitioner brings his motion under Rule 60(b) of the Federal Rules of Civil Procedure.

1           Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for  
 2 the following reasons:

3           (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
 4 discovered evidence which by due diligence could not have been  
 5 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
 6 (whether heretofore denominated intrinsic or extrinsic),  
 7 misrepresentation, or other misconduct of an adverse party; (4) the  
 8 judgment is void; (5) the judgment has been satisfied, released, or  
 9 discharged, or a prior judgment upon which it is based has been  
 10 reversed or otherwise vacated, or it is no longer equitable that the  
 11 judgment should have prospective application; or (6) any other reason  
 12 justifying relief from the operation of the judgment.

13           Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
 14 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
 15 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
 16 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.  
 17 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987).

18           In the instant case, petitioner has failed to demonstrate any mistake, newly discovered  
 19 evidence, or any other reason for relief from the Court's February 7, 2011 order. Petitioner has failed  
 20 to make an adequate showing under Rule 60(b), and as such, the motion for relief from this court's  
 21 order is denied.

## 17           **II. Motion to Amend Pleadings (ECF No. 55)**

18           On April 19, 2011, petitioner filed a motion to amend his federal habeas petition. (ECF No.  
 19 55). Respondents oppose the motion. (ECF No. 57).

20           Rule 15 provides: "A party may amend his pleading once as a matter of course within 21 days  
 21 after service of a responsive pleading, or 21 days after service of a motion under Rule 12(b), (e), or  
 22 (f), whichever is earlier. Federal Rule of Civil Procedure 15(a)(1)(B)." Rule 15 further provides that  
 23 "In all other cases a party may amend its pleading only . . . with the court's leave. The court should  
 24 freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

1       Although leave to amend “shall be freely given when justice so requires,” the court may  
 2 consider “bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and  
 3 whether the party has previously amended his pleadings” though each factor is not necessarily given  
 4 equal weight. *Bonin v. Calderon*, 59 F.3d 815, 844-45 (9<sup>th</sup> Cir. 1995); *Foman v. Davis*, 371 U.S.  
 5 178, 182 (1962) (the court may consider whether there is evidence of “undue delay, bad faith or  
 6 dilatory motive” as to whether the motion to amend should be granted). A district court may deny a  
 7 motion to amend where the movant presents no new facts, only new theories, with no satisfactory  
 8 explanation for the failure to fully develop the contentions in the first place. *Bonin*, 59 F.3d at 844-  
 9 45. Moreover, leave to amend may be denied if the proposed amendment is futile or would be  
 10 subject to dismissal. *Saul v. United States*, 928 F.2d 829, 843 (9<sup>th</sup> Cir. 1991).

11       In the instant case, petitioner seeks leave to amend his petition to reinstate a portion of  
 12 Ground Nine that he previously abandoned. (ECF Nos. 55 & 30). Petitioner has already voluntarily  
 13 “forever abandoned” this claim. (ECF No. 30, at p. 1). Moreover, Ground Nine is unexhausted.  
 14 Finally, respondents have filed an answer to the remaining grounds of the petition (ECF No. 39) and  
 15 petitioner has filed his reply to the answer (ECF No. 40). Respondents would be prejudiced by any  
 16 amendment of the petition at this point. The Court will not allow petitioner to amend his petition at  
 17 this stage of the proceedings. Petitioner’s motion to amend the petition is denied.

18 **III. Motion for Copy of Local Rules (ECF No. 59)**

19       On May 31, 2011, petitioner filed a motion for a copy of the Local Rules of Court at no  
 20 charge. Petitioner claims that the prison at which he is incarcerated, High Desert State Prison, lacks  
 21 a copy of this Court’s Local Rules. Giving petitioner the benefit of the doubt, this Court will direct  
 22 the Clerk of Court to send a copy of this Court’s Local Rules to the prison law library at High Desert  
 23 State Prison.

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1     **IV. Conclusion**

2         **IT IS THEREFORE ORDERED** that petitioner's motion for relief from this court's order  
3 (ECF No. 50) is **DENIED**.

4         **IT IS FURTHER ORDERED** that petitioner's motion to amend the petition (ECF No. 55)  
5 is **DENIED**.

6         **IT IS FURTHER ORDERED** that petitioner's motion for a copy of the Local Rules (ECF  
7 No. 59) is **GRANTED**. The Clerk of Court **SHALL SEND** the prison law library at High Desert  
8 State Prison a copy of this Court's Local Rules of Practice.

9             Dated this 28<sup>th</sup> day of July, 2011.

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12             UNITED STATES DISTRICT JUDGE

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